

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:

EVELYN SCHEIN,

Complainant,

and

DIVERSEY MEDICAL CENTER, S.C. AND
OSAMA F. HASSAN ABDELLATIF,

Respondent.

CHARGE NO(S): 2007CF2227
2007CN2228

EEOC NO(S): N/A
ALS NO(S): 08-0005C

NOTICE

You are hereby notified that the Illinois Human Rights Commission has not received timely exceptions to the Recommended Order and Decision in the above named case. Accordingly, pursuant to Section 8A-103(A) and/or 8B-103(A) of the Illinois Human Rights Act and Section 5300.910 of the Commission's Procedural Rules, that Recommended Order and Decision has now become the Order and Decision of the Commission.

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

Entered this 9th day of April 2010

N. KEITH CHAMBERS
EXECUTIVE DIRECTOR

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:

**EVELYN SCHEIN,
Complainant,**

and

**DIVERSEY MEDICAL CENTER, S.C. and
OSAMA F. HASSAN ABDELLATIF,
Respondents.**

)
)
)
) **Charge Nos: 2007CF2227**
) **2007CN2228**
) **EEOC No: N/A**
) **ALS No: 08-0005C**
)
)
)
)
)

RECOMMENDED ORDER AND DECISION

This matter is before me on Respondents' motion to dismiss this case, filed June 24, 2009. The record shows that the motion has been served on all parties and the Illinois Department of Human Rights.

The Illinois Department of Human Rights is an additional statutory agency that has issued state actions in this matter. It is, therefore, named herein as an additional party of record.

CONTENTIONS OF THE PARTIES

Respondents contend this matter should be dismissed due to Complainant's conduct, which has resulted in unreasonable delay of this matter. Complainant filed no response to the motion.

FINDINGS OF FACT

The following findings of fact were made from the record:

1. Complainant filed a Charge of Discrimination (Charge number 2007CF2227) with the Illinois Department of Human Rights (Department) on February 14, 2007. The Department, on behalf of Complainant, filed a Complaint based on the underlying Charge with the Illinois Human Rights Commission (Commission) on January 15, 2008. The Complaint alleged that Respondent, Diversey Medical Center S.C., subjected Complainant to discrimination in violation of the Illinois Human Rights Act (Act), 775 ILCS 5/1-101*et seq.*

2. Complainant filed a second Charge of Discrimination (Charge number 2007CN2228) with the Department on February 14, 2007. The Department, on behalf of Complainant, filed a Complaint based on the underlying Charge with the Commission on January 11, 2008. The Complaint alleged that Respondent, Osama F. Hassan Abdellatif, subjected Complainant to discrimination in violation of the Act. Respondent Abdellatif filed a motion to dismiss for lack of subject matter jurisdiction on April 21, 2008. That motion was denied on July 24, 2008.
3. Both Complaints were consolidated by order of the Chief Administrative Law Judge on November 13, 2008.
4. Complainant's attorney, Francis Paul DeRosa, filed a motion to withdraw as counsel for Complainant, which was granted by order of April 14, 2009. The order ordered Complainant to file her own appearance or an appearance of substitute counsel within 21 days and to appear personally or through counsel for status on June 9, 2009. The order warned that failure to appear may result in dismissal of this matter. Attorney Francis Paul De Rosa filed proof of service on April 22, 2009, indicating that a copy of the April 14, 2009 order was served on Complainant at her last known address on April 15, 2009.
5. On June 9, 2009, Complainant did not appear. Respondent Abdellatif appeared thorough counsel. Respondent Diversey Medical Center did not appear. An order was entered ordering Respondents to file a motion to dismiss by June 22, 2009 and further ordering Complainant to file a response by July 8, 2009. The parties were ordered to appear for hearing on the motion on July 14, 2009.
6. Respondents filed a motion to dismiss on June 24, 2009. Complainant did not file a response. On July 14, 2009, Complainant did not appear. Respondent Diversey Medical Center appeared through counsel for hearing on the motion. Respondent Abdellatif did not appear. The record showed that Complainant had not filed an appearance on behalf of herself and that no appearance by substitute counsel had been filed.

CONCLUSION OF LAW

Complainant's conduct in failing to file a response to the motion to dismiss and in failing to appear for scheduled hearings has resulted in unreasonable delay of this matter.

DETERMINATION

Dismissal of this Complaint is warranted due to Complainant's conduct, which has unreasonably delayed this matter.

DISCUSSION

Respondents contend this matter should be dismissed due to Complainant's failure to appear at the scheduled hearing on June 9, 2009, and for Complainant's further failure to comply with the Commission order to file an appearance in this matter.

Complainant filed a Charge of Discrimination (Charge number 2007CF2227) with the Illinois Department of Human Rights (Department) on February 14, 2007. The Department, on behalf of Complainant, filed a Complaint based on the underlying Charge with the Illinois Human Rights Commission (Commission) on January 15, 2008. The Complaint alleged that Respondent, Diversey Medical Center, subjected Complainant to discrimination in violation of the Illinois Human Rights Act (Act), 775 ILCS 5/1-101*et seq.*

Complainant filed a second Charge of Discrimination (Charge number 2007CN2228) with the Department on February 14, 2007. The Department, on behalf of Complainant, filed a Complaint based on the underlying Charge with the Commission on January 11, 2008. The Complaint alleged that Respondent, Osama F. Hassan Abdellatif, subjected Complainant to discrimination in violation of the Act. Respondent Abdellatif filed a motion to dismiss for lack of subject matter jurisdiction on April 21, 2008. That motion was denied on July 24, 2008. Both Complaints were consolidated by order of the Chief Administrative Law Judge on November 13, 2008.

Complainant's attorney, Francis Paul DeRosa, filed a motion to withdraw as counsel for Complainant, which was granted by order of April 14, 2009. The order ordered Complainant to file her own appearance or an appearance of substitute counsel within 21 days and further

ordered Complainant to appear personally or through counsel for status on June 9, 2009. The order warned that failure to appear may result in dismissal of this matter. Attorney Francis Paul De Rosa filed proof of service on April 22, 2009, indicating that a copy of the April 14, 2009 order was served on Complainant at her last known address on April 15, 2009.

On June 9, 2009, Complainant did not appear. Respondent Abdellatif appeared through counsel. Respondent Diversey Medical Center did not appear. An order was entered ordering Respondents to file a motion to dismiss by June 22, 2009, and further ordering Complainant to file a response by July 8, 2009. The parties were ordered to appear for hearing on the motion on July 14, 2009. Respondents filed a motion to dismiss on June 24, 2009. Complainant filed no response. On July 14, 2009, Respondent Diversey Medical Center appeared through counsel for hearing on the motion. Complainant did not appear. Respondent Abdellatif did not appear. The record showed that Complainant had not filed an appearance on behalf of herself and that no appearance by substitute counsel had been filed.

Section 5/8A-102(1)(6) of the Act authorizes a recommended order of dismissal, with prejudice, as a sanction for a party's failure to prosecute his case, appear at a hearing, or otherwise comply with this Act, the rules of the Commission, or a previous order of the Administrative Law Judge. Complainant failed to file a response to the motion to dismiss this Complaint, although allowed time to do so. Complainant further failed to appear for scheduled hearing on the motion. The Commission has said, "[w]e will not search the record to find reasons to deny a motion. If a motion appears valid on its face, and if the other side cannot tell us why the motion should not be granted, we will grant the motion." *Jones and Burlington Northern Railroad*, IHRC, 1704, June 23, 1986. Complainant's conduct warrants dismissal of this case.

RECOMMENDATION

Accordingly, I recommend that this Complaint and the underlying Charges be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

ENTERED: July 15, 2009

BY: _____
SABRINA M. PATCH
Administrative Law Judge
Administrative Law Section